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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,496	08/16/2001	Curtis Generous	25622.011100CIP	1584

7590 10/19/2005

GREENBERG TRAUIG, LLP
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EXAMINER

ALAM, UZMA

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/930,496	GENEROUS ET AL.	
	Examiner	Art Unit	
	Uzma Alam	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-130 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-130 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the election of claims filed on August 4, 2005. Claims 1-129 are pending. Claims 1-32, 49-117, 120, 121, 124, 126, 127 and 129 are elected. Claims 33-48, 118, 119, 125, 128, 122, 123 and 130 are withdrawn from consideration. Claims 1-32, 49-117, 120, 121, 124, 126, 127 and 129 represent a method for delivering messages based on a subscriber profile. Although the applicant elected the first group of claims, upon further consideration, Examiner found another restriction necessary. Examiner takes this opportunity to further restrict the claims.

Claim Objections

2. Claims 13, 28, 65, 87, 102, 112 and 121 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. These claims are a repetition of their respective preceding claim..

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-32, and 124 are drawn a method for delivering messages based on a subscriber profile, classified in class 709, subclass 206.

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- II. Claims 33-48, 118, 119, 125 and 128 are drawn to a method for monitoring network conditions, classified in class 709, subclass 224.
- III. Claims 49-89, and 126 drawn to method for delivering messages based on expiration time, classified in class 709, subclass 207.
- IV. Claims 90-117 and 127, drawn to adding a channel dependent tracking ID to a message, classified in class 709, subclass 228
- V. Claims 120, 121 and 129, drawn to delivering messages based on location, classified in class 709, subclass 207.
- VI. Claims 122, 123 and 130 are drawn to a method for sending a message based retrieval pattern of recipient, classified in class 709, subclass 232.

The inventions are distinct, each from the other because of the following reasons:

Inventions in Groups I -VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention in Group I has separate utility such as sending a message. See MPEP § 806.05(d). Invention in Group II has separate utility as such a method for monitoring network conditions and prioritizing messages based on the conditions. Group VI has separate utility because it bases the delivery of the message on the retrieval pattern of the recipient, or regulating data transfer. The search required for Groups I is not required for Groups II or III.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter,

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restriction for examination purposes as indicated is proper. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Under 35 U.S.C. 133 a shortened statutory **period to reply to this Office Action is set to 30 (thirty) days.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uzma Alam whose telephone number is (571) 272-3995. The examiner can normally be reached on Monday-Tuesday 11:30am-8pm.

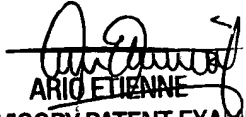
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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